

Delta Flood Protection Act of 1988

Senate Bill 34

A Report to the California Legislature
on Fiscal Year 1994-95 Activities
of the Delta Flood Protection Act Program

March 1997

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Contents

Introduction—SB 34 Legislative Report, Fiscal Year 1994-95	1	Chapter 4—Cumulative Environmental Impacts	17
Chapter 1—Program Description	3	Chapter 5—Program Highlights	19
Delta Levee Maintenance Subventions Program (Subventions)	3	Subventions: SB 1065 MOU Mandates	19
Special Flood Control Projects (Special Projects)	3	Master Environmental Assessment	19
Long-term Flood Protection for the Delta	4	Mitigation Guidance Document	19
No Net Long-Term Loss of Habitat	4	U.S. Army Corps of Engineers' General Permit 014	19
Chapter 2—Subventions Program		Little Mandeville Island Programmatic Mitigation Site	19
Funding & Mitigation	5	Demonstration Projects	19
Funding History	5	Appendix A—Senate Bill No. 34	21
Fiscal Year 1994-95 Program Participation	5	Appendix B—Senate Bill No. 1065	29
Habitat Impacts & Mitigation Summary	5	Appendix C—MOU By and Between the California Department of Water Resources, The Reclamation Board, California Department of Fish and Game, and The Resources Agency Regarding SB 34 Fish and Wildlife Protection	35
Table 1—Estimated Delta Levee Subvention Program Expenditures (1987-88 to 1993-94)	7	Appendix D—Conversion Factors	43
Table 2—Estimated Reimbursements for Delta Levee Subventions Program, Fiscal Year 1994-95	8		
Figure 1—Subventions: Hotchkiss Tract	9		
Figure 2—Subventions: Mandeville Island	10		
Chapter 3—Special Projects Program			
Funding & Mitigation	11		
Funding History (spent to date)	11		
Fiscal Year 1994-95 Project Summary	11		
Habitat Impacts & Mitigation Summary	11		
Tables 3 and 4—Special Projects	11		
Figure 3—Special Projects: Bethel Island	12		
Figure 4—Special Projects: Jersey Island	13		
Figure 5—Special Projects: Sherman Island	14		
Figure 6—Special Projects: Twitchell Island	15		
Figure 7—Special Projects: Webb Tract	16		

SB 34 Legislative Report—Fiscal Year 1994-95

Senate Bill 1065 requires The Resources Agency to provide a report to the California Legislature on the progress of activities of the Delta Flood Protection Act of 1988 (SB 34). SB 34, enacted on March 11, 1988, provides financial assistance to local agencies in the Sacramento-San Joaquin Delta for levee maintenance, repair, and rehabilitation.

SB 34 funding has enabled 50 reclamation districts to perform levee improvements necessary to prevent flooding, particularly during high flows in early 1995. Since the inception of the program, only one Delta island, Little Mandeville Island, has experienced levee failure and flooding. The unexpected levee breach occurred in August 1994 and is attributed to undetected rodent activity.

SB 34 staff has established extensive procedures to ensure compliance with the program's flood control and environmental mandates. Strong work alliances between SB 34 engineers and consulting engineers working on the levees have resulted in cost-effective levee maintenance and improved repair designs.

Two other important Delta programs share SB 34's combined objectives of flood protection through levee maintenance and repair, and environmental protection for habitats growing in association with levees:

- ▶ The **Delta Protection Commission**, which is developing appropriate land use guidelines for the Delta to preserve open space benefits, and
- ▶ The **CALFED Bay-Delta Program**, which is developing long-term solutions to problems affecting the San Francisco Bay/Sacramento-San Joaquin River Delta. One of the elements upon which the solution-finding effort focuses is the vulnerability of Delta levees and channels to natural disasters.

SB 34 is comprised of two program components: Delta Levees Maintenance Subventions (Subventions) and Special Flood Control Projects (Special Projects). Both programs are administered by the Department of Water Resources' Flood Control and Geographic Information Branch, Division of Local Assistance, Central District. (Chapter 1)

This report pertains to program activities for fiscal year 1994-95 and contains the following information:

- ▶ A summary of Delta reclamation district participation in SB 34, including State-funded costs for levee improvements; the amount and location of habitat impacts; and the amount, location, and cost of mitigation. Program participation is separated into two chapters: Chapter 2 describes Subventions participation and Chapter 3 describes Special Projects participation.
- ▶ An assessment as to whether projects funded by SB 34 have resulted in the cumulative, net, long-term loss of riparian, fisheries, or wildlife habitat. Both Subventions and Special Projects program activities are discussed in Chapter 4.

In addition to the above information, this report will review important program achievements that have enabled more efficient administration of SB 34 and its environmental mandates (Chapter 5).

A copy of SB 34 is included as **Appendix A**.

SB 1065, which was signed into law on October 11, 1991, provides supplemental guidance for SB 34 program activities. SB 1065 requires the preparation of this report. It also outlines the requirements of a memorandum of understanding between The Resources Agency, The Reclamation Board, DWR, and

the Department of Fish and Game to implement
SB 34's mandates. A copy of SB 1065 and the MOU are
included as **Appendix B and Appendix C.**

Program Description

Delta Levee Maintenance Subventions Program (Subventions)

This program provides up to \$6,000,000 annually for assisting levee maintenance, repair, and rehabilitation in compliance with the State's Flood Hazard Mitigation Plan objectives. The Subventions Program provides funding, as a reimbursement, to local Delta reclamation districts and is subject to the rules prescribed in SB 34 and SB 1065.)For fiscal year 1994-95, \$5,515,000 was allocated by the State to the Subventions Program.

DWR's Central District administers the Subventions Program with specific work approved by The Reclamation Board. Each year, districts that want to participate in the program prepare a workplan and file applications with the Board for funding available in that fiscal year's budget. After applications and workplans are reviewed, DWR requests their approval by the Board. The Board is also requested to approve each district's maximum possible reimbursement (up to 75 percent for levee work; up to 100 percent for mitigation) and maximum advanced reimbursement amounts based on the program's reimbursement prioritization scheme and available funding. Upon Board approval, agreements are executed between the Board and each participating district stating that eligible work will be completed during the fiscal year. The maximum reimbursement and maximum advance amounts are specified in these agreements as well.

DFG reviews the proposed workplans to make sure required environmental documentation is submitted. If a proposed levee maintenance, repair, or rehabilitation project is expected to result in net habitat losses, DFG works with the districts to ensure implementation of required mitigation. DFG also makes annual inspections of all completed work to confirm the finding of no net long-term loss of

riparian, fisheries, or wildlife habitat. The finding is submitted to DWR in writing.

After the end of each fiscal year, program participants file final claims for reimbursements. Sometimes work plans are changed as a result of conditions that occur during the fiscal year. Final reimbursement amounts, which DWR determines based on the program's administrative procedures, are summarized and submitted to the Board for approval. DFG must make the finding that the work did not result in net long-term habitat loss before reimbursements can be made. DFG also assists the districts in satisfying the requirements of CEQA, the State and Federal Endangered Species Acts, Section 1600 of the Fish and Game Code, Section 404 of the Clean Water Act, and other necessary environmental compliance documents.

Special Flood Control Projects (Special Projects)

This program provides up to \$6,000,000 annually for threatened levee repair, long-term levee improvement, and engineering studies for eight western Delta islands (Bethel, Bradford, Holland, Hotchkiss, Jersey, Sherman, Twitchell, and Webb) and the towns of Thornton and Walnut Grove. The Special Flood Control Projects Program provides cost sharing subject to the language of SB 34 and SB 1065. The program spent \$4,884,000 of the total allocation on levee improvements and spent the remaining funds for program administration and special investigations such as subsidence control.

DWR's Central District administers the Special Projects program and coordinates with reclamation districts on work necessary for maintaining flood control facilities. DWR then enters into work agreements with the reclamation districts to provide the funding necessary to allow the reclamation districts to contract out for

the services identified in the work agreements. DFG must determine that the work cost-shared by Special Projects does not result in a net long-term loss of riparian, fisheries, and wildlife habitat.

Long-Term Flood Protection for the Delta

Since SB 34-funded work is limited in scope to short-term flood hazard mitigation, DWR, DFG, and many other agencies participate in the CALFED Bay-Delta Advisory Committee effort to develop long-term solutions to the Delta's problems, including flood protection.

Additionally, DWR is working with the U.S. Army Corps of Engineers to develop a long-term flood protection strategy. The Corps is preparing a prereconnaissance-level study of federal interest in flood control in the Delta. The study may recommend a stronger role for the Corps in maintenance and improvement of levees not currently under Corps authority.

No Net Long-Term Loss of Habitat

SB 34 staff has developed a Geographic Information System to track and map habitat impacts and mitigation associated with levee work. GIS also maintains current information on the distribution of special status plant and animal species as well as the location of areas of special resource value. This information is provided to program staff and consultants during the preparation and review of environmental documentation.

Subventions Program Funding & Mitigation

Funding History

Since enactment of the SB 34 program, 50 districts, maintaining 466 miles of nonproject levees, have completed eligible work under the program. Reimbursements totalling \$26.7 million by the State have been made to districts that have expended \$66.5 million to maintain and rehabilitate their levees.

Table 1 shows the total amount each district was reimbursed over the life of the program and the number of years each district participated.

Fiscal Year 1994-95 Program Participation

The FY 1994-95 budget allocated \$5,315,000 in Direct Pay funds to the Subventions Program. Applications from 48 districts were approved by The Reclamation Board in February 1995. Approved applications totalled \$19.3 million, including \$2.4 million for the estimated costs of fish and wildlife mitigation proposals. The Board's approval enabled the Subventions Program to encumber \$4.8 million for partial reimbursement of estimated levee maintenance and rehabilitation costs and \$515,000 for development and implementation of fish and wildlife mitigation projects. **Table 2** summarizes the estimated reimbursements of eligible levee maintenance and rehabilitation work for FY 1994-95. As of January 15, 1996, 42 districts are expected to file final claims totalling \$9.1 million. Six of the 48 districts did not exceed the \$1,000 a mile requirement for program reimbursement. To date, 16 districts have received reimbursement in the form of progress payments totalling \$1.4 million.

Some Subventions Program claim costs, for various reclamation districts, are pending since they are connected to unresolved claims submitted to the Federal Emergency Management Agency after the declaration of Presidential disasters in January and March 1995. During federally declared disasters, emergency levee repairs undertaken during, and

subsequent to, the event have been eligible for FEMA reimbursement. Claims that are determined by FEMA to be ineligible for federal disaster assistance may be submitted for Subventions Program reimbursement pursuant to Water Code Section 12993.

FEMA has denied disaster assistance eligibility for postincident repair of Delta levees damaged during the January and March 1995 disasters. On August 22, 1995, the State Office of Emergency Services filed an appeal to FEMA to reconsider its decision. The results of the appeal are pending. The final decision may not favor the districts' claims. Therefore, the estimated reimbursement percentages for levee work funded by the Subventions Program (Table 2, columns 6, 8, 10 and 12) have been calculated assuming that FEMA-denied disaster costs will be reimbursed by the Subventions Program.

Habitat Impacts & Mitigation Summary

Mitigation is required if a net long-term loss of riparian, fisheries, or wildlife habitats occur during SB 34 levee maintenance or rehabilitation work. Each year, DFG personnel inspect each participating district's worksite to determine if a net long-term loss of habitat occurred the previous year.

Hotchkiss Tract and Mandeville Island were the only districts whose levee work resulted in habitat impacts. Mitigation plans and agreements were developed in coordination with DFG. DFG issued reimbursement approval letters to both districts. DFG will monitor the sites.

Figures 1 and 2 illustrate the location, type, and amount of habitat impacted by levee work on Hotchkiss Tract and Mandeville Island, as well as any required habitat mitigation. Reclamation districts whose work did not result in net long-term habitat losses do not have an associated figure. DFG keeps a

record of all Subventions-funded work in its Sacramento Valley/Central Sierra (Region 2) office. The figures were prepared by DWR's Central District staff on the SB 34 GIS.

Subventions funds are not expected to be spent in developing mitigation for Hotchkiss Tract because of the natural vegetation regrowth strategy. Estimates for the cost of developing mitigation for habitat impact on Mandeville Island have not yet been developed.

The following habitat-type coding system is used on all of the impact/mitigation figures:

- ▶ SRA: Shaded Riverine Aquatic Habitat
- ▶ PFO: Palustrine Forested Habitat (Riparian Forest)
- ▶ PSS: Palustrine Shrub-Scrub Habitat (Riparian Scrub)
- ▶ PEM: Palustrine Emergent Marsh (Landlocked Wetland)
- ▶ REM: Riverine Emergent Marsh (Riverine Wetland)

Table 1—Estimated Delta Levee Subvention Program Expenditures (1987-88 to 1993-94)

Districts	Recla- mation District No.	Non- project Levee Miles	Area (Acres)	State Sub- ventions (\$)	Local Share (\$)	Total (\$)	No. of Years in Pro- gram
Bacon	2028	14.3	5,625	1,878,229	1,048,258	2,926,487	7
Bethel		11.5	3,500	632,777	467,442	1,100,219	7
Bishop	2042	7.8	2,169	646,255	5,272,204	5,917,459	7
Bouldin	756	18.0	6,006	2,028,097	2,233,150	4,261,247	6
Brack	2033	10.8	4,873	151,170	114,539	265,709	5
Brannan-Andrus		10.1	13,000	1,065,729	2,080,083	3,145,812	7
Byron	800	9.7	6,933	1,053,846	751,062	1,804,908	7
Canal Ranch	2086	9.6	2,996	264,816	146,050	410,866	6
Coney	2117	5.4	935	134,933	66,776	201,709	4
Empire	2029	10.5	3,430	91,455	83,122	174,577	5
Fay	2113	1.6	100	117,510	49,369	166,879	4
Glanville	1002	7.4	—	41,088	21,096	62,184	1
Holland	2025	11.0	4,060	1,218,097	4,399,944	5,618,041	7
Hotchkiss	799	6.7	3,100	484,450	14,854	499,304	7
Jones, Lower	2038	9.0	5,994	207,691	301,778	509,469	6
King	2044	9.1	3,260	311,646	161,991	473,637	6
Little Mandeville	2118	4.5	376	187,069	176,307	363,376	7
Mandeville	2027	14.3	5,300	1,067,209	1,009,710	2,076,919	7
McCORMACK-WM	2110	8.8	1,654	316,356	165,257	481,613	6
McDonald	2030	13.7	6,145	3,948,866	10,460,304	14,409,170	7
Medford	2041	5.9	1,219	507,022	318,945	825,967	7
New Hope	348	18.6	9,300	157,970	108,456	266,426	3
Orwood	2024	6.4	4,138	72,040	43,175	115,215	3
Palm	2036	7.6	2,436	196,745	160,348	357,093	4
Pescadero	2058	2.5	—	80,205	44,767	124,972	7
Prospect	1667	7.1	1,228	28,716	16,672	45,388	1
Quimby	2090	7.0	769	927,859	605,050	1,532,909	6
Rindge	2037	15.8	6,834	555,948	280,273	836,221	6
Rio Blanco	2114	4.2	705	32,443	32,407	64,850	3
Roberts, Lower	684	16.0	10,600	366,005	272,982	638,987	6
Sargent Barnart	2074	3.5	1,214	555,338	1,882,141	2,437,479	4
Sherman	341	9.8	9,937	362,792	214,964	577,756	3
Shima	2115	6.6	2,394	125,580	117,664	243,244	7
Smith	1614	2.8	—	51,083	35,796	86,879	6
Stark	2089	0.7	734	30,289	21,640	51,929	5
Staten	38	25.4	9,173				—
Terminus	548	16.1	10,470	183,629	153,399	337,028	4
Twitchell	1601	9.4	3,516	697,824	306,653	1,004,477	7
Tyler	563	10.7	8,583	301,741	164,781	466,522	6
Union, East	1	13.0	9,622	177,042	143,411	320,453	5
Union, West	2	16.2	12,580	623,165	344,625	967,790	7
Upper Andrus	556	0.5	—	62,409	80,836	143,245	4
Van Sickle	1607	3.8	1,058	243,378	134,725	378,103	7
Venice	2023	12.3	3,220	1,606,086	1,276,906	2,882,992	7
Victoria	2040	15.1	7,250	706,011	408,838	1,114,849	7
Webb	2026	12.9	5,490	1,368,394	3,032,301	4,400,695	6
Weber	828	1.7	660	84,813	42,929	127,742	4
Winter	2122	4.8	—	189,590	125,506	315,096	7
Woodward	2072	8.8	1,822	265,520	245,654	511,174	7
Wright-Elmwood	2119	7.1	2,121	336,762	167,500	504,262	7
Total 50 Districts		466.1	206,529	26,742,688	39,806,640	66,549,328	

December 14, 1995

Table 2—Estimated Reimbursements for Delta Levee Subventions Program, Fiscal Year 1994-95 (a)

RD	Name (Engineer)	Levee	Final Claim	Allowable Maintenance	Less \$1,000 Per Mile	Net Allowable Maintenance	Maintenance Reimb. 75 %	Eligible Environ. Document	Eligible Reimb. 75 %	Eligible Hmp	Eligible Reimb. 75 %	Eligible Bull. 192-82	Bull. 192-82 Reimb. 32 %	Eligible Other Rehab.	Other rehab. 0 %	Total Reimb. to Districts (b)
NO		Miles	Amount	Maintenance	Per Mile	Maintenance		Document								\$
2028	Bacon (KSN)	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	(13)	(14)	(15)
2028	Bacon (KSN)	14.3	67,984	53,168	(14,500)	38,668	29,143	395	298	0	0	3,840	1,216	0	0	30,655
2042	Beckel (Gennrich)	11.5	149,821	139,514	(11,500)	128,014	86,010	2,334	1,751	0	0	0	0	0	0	87,761
2042	Bishop (KSN)	7.8	77,166	30,209	(7,500)	22,409	16,907	116	87	0	0	0	0	0	0	16,894
756	Bouldin (MBK)	18.0	193,849	189,474	(18,000)	171,474	128,606	533	399	0	0	0	0	0	0	128,005
2033	Brack (KSN)	10.8	26,478	26,168	(10,500)	14,368	10,768	320	240	0	0	0	0	0	0	11,008
	Brannan-Andrus (DCC)	10.1	412,934	126,250	(10,100)	116,150	87,112	360	270	39,286	29,466	130,281	41,246	0	0	158,094
800	Byron (KSN)	9.7	1,088,928	121,250	(9,700)	111,550	83,662	2,824	1,968	89,103	51,077	894,776	283,279	0	0	418,886
2058	Canal Ranch (MBK)	9.6	776,798	120,000	(9,600)	110,400	82,800	2,755	2,068	653,952	490,464	(0)	(0)	0	0	576,330
2028	Empire (MBK)	10.5	76,828	76,427	(10,500)	64,927	48,685	284	213	0	0	0	0	0	0	48,908
2026	Holland (MBK)	11.0	27,180	26,447	(11,000)	15,447	11,586	733	549	0	0	0	0	0	0	12,135
759	Hochkiss (Burns)	6.7	84,161	68,149	(6,700)	61,449	36,586	770	577	0	0	25,233	7,988	0	0	47,161
2038	Jones, Lower (Roeten)	9.0	100,000	100,000	(9,000)	91,000	68,259	0	0	0	0	0	0	0	0	68,250
2044	King (MBK)	8.1	102,059	101,638	(8,100)	92,538	69,404	420,98	316	0	0	0	0	0	0	69,720
2118	Little Mandeville (KSN)	4.5	21,939	21,531	(4,500)	17,031	12,773	408	306	0	0	0	0	0	0	13,079
2027	Mandeville (KSN)	14.3	639,424	178,750	(14,300)	164,450	123,337	2,998	2,248	422,108	316,562	0	0	0	0	442,167
2110	McCORMACK-WM (MBK)	8.8	179,893	28,701	(8,800)	19,901	14,926	1,822	1,217	0	0	0	0	0	0	16,143
2030	McDonald (KSN)	13.7	891,581	171,250	(13,700)	157,550	118,162	1,946	1,480	216,817	161,863	302,578	86,794	0	0	377,279
2041	Medford (KSN)	6.9	60,003	57,304	(6,900)	61,404	38,553	2,699	2,024	0	0	0	0	0	0	40,577
2024	Owens (Roeten)	6.4	70,000	70,000	(6,400)	63,600	47,700	0	0	0	0	0	0	0	0	47,700
2036	Palm (Roeten)	7.6	232,000	85,000	(7,600)	87,400	65,550	0	0	0	0	137,000	43,373	0	0	108,923
2058	Pescadero (KSN)	2.5	28,347	28,409	(2,500)	23,909	17,932	1,579	1,184	0	0	0	0	0	0	18,116
2090	Quincy (KSN)	7.0	1,093,567	61,174	(7,000)	44,174	33,131	216	161	0	0	699,785	221,546	282,383	0	254,838
2037	Ridge (MBK)	15.6	112,034	111,632	(15,600)	95,732	71,799	902	376	0	0	0	0	0	0	72,176
684	Roberts, Lower (Roeten)	16.0	231,000	200,000	(16,000)	184,000	139,000	0	0	31,000	23,250	0	0	0	0	161,250
341	Sherman (Hanson)	9.8	183,500	122,500	(9,800)	112,700	84,525	0	0	0	0	61,000	19,312	0	0	103,837
2116	Shina (KSN)	6.6	62,002	61,698	(6,600)	55,098	41,293	246	183	0	0	0	0	0	0	41,478
1614	Smith (KSN)	2.8	11,818	11,704	(2,800)	8,904	6,678	114	88	0	0	0	0	0	0	6,764
2089	Stark (KSN)	0.7	13,667	8,750	(700)	8,950	6,638	33	25	0	0	4,864	1,548	0	0	7,608
38	Staten (Hanson)	25.4	280,760	240,757	(25,400)	215,357	161,518	0	0	0	0	0	0	0	0	161,518
548	Terminous (Roeten)	16.1	200,000	200,000	(16,100)	183,900	137,925	0	0	0	0	0	0	0	0	137,925
1601	Twitcheil (KSN)	9.4	153,437	117,283	(9,400)	107,883	80,913	2,241	1,691	0	0	0	0	0	0	82,594
563	Tyler (KSN)	10.7	247,566	133,750	(10,700)	123,050	92,288	921	691	112,895	84,671	0	0	0	0	177,650
1	Union, East (KSN)	13.0	77,457	72,179	(13,000)	69,179	44,384	4,168	3,128	0	0	0	0	0	0	47,510
2	Union, West (KSN)	16.2	40,999	38,473	(16,200)	22,273	16,704	2,666	1,925	0	0	0	0	0	0	18,629
1607	Van Sickle (Jacobson)	3.8	100,000	47,600	(3,800)	43,700	32,775	0	0	62,500	39,375	0	0	0	0	72,150
2023	Venice (KSN)	12.3	145,288	131,930	(12,300)	119,630	89,723	574	431	0	0	0	0	0	0	90,154
2040	Victoria (KSN)	16.1	91,430	82,840	(16,100)	67,740	60,805	558	418	0	0	0	0	0	0	61,223
2026	Webb (MBK)	12.9	873,351	161,250	(12,900)	148,350	111,263	2,667	1,926	707,583	530,688	0	0	0	0	643,876
828	Weber (Roeten)	1.7	20,000	20,000	(1,700)	18,300	13,725	0	0	0	0	0	0	0	0	13,725
2122	Winter (MBK)	4.8	14,160	12,383	(4,800)	7,593	6,695	901	676	0	0	0	0	0	0	6,371
2072	Woodward (Roeten)	8.8	100,000	100,000	(8,800)	91,200	69,400	0	0	0	0	0	0	0	0	69,400
2118	Wright-Elmwood (KSN)	7.1	47,893	46,289	(7,100)	39,189	29,392	1,405	1,053	0	0	0	0	0	0	30,445
Total	42 Districts	417.8	9,144,648	3,787,581	(417,800)	3,369,781	2,527,338	39,904	29,928	2,303,248	1,727,436	2,256,375	716,300	282,383	0	6,000,000

(a) Staff has encumbered \$515,000 for the purpose of reimbursing fish and wildlife mitigation projects.

(b) In addition to the \$4,900,000 appropriation, staff encumbered \$200,000 in available State Operations funding increasing levee reimbursement to \$5,000,000.

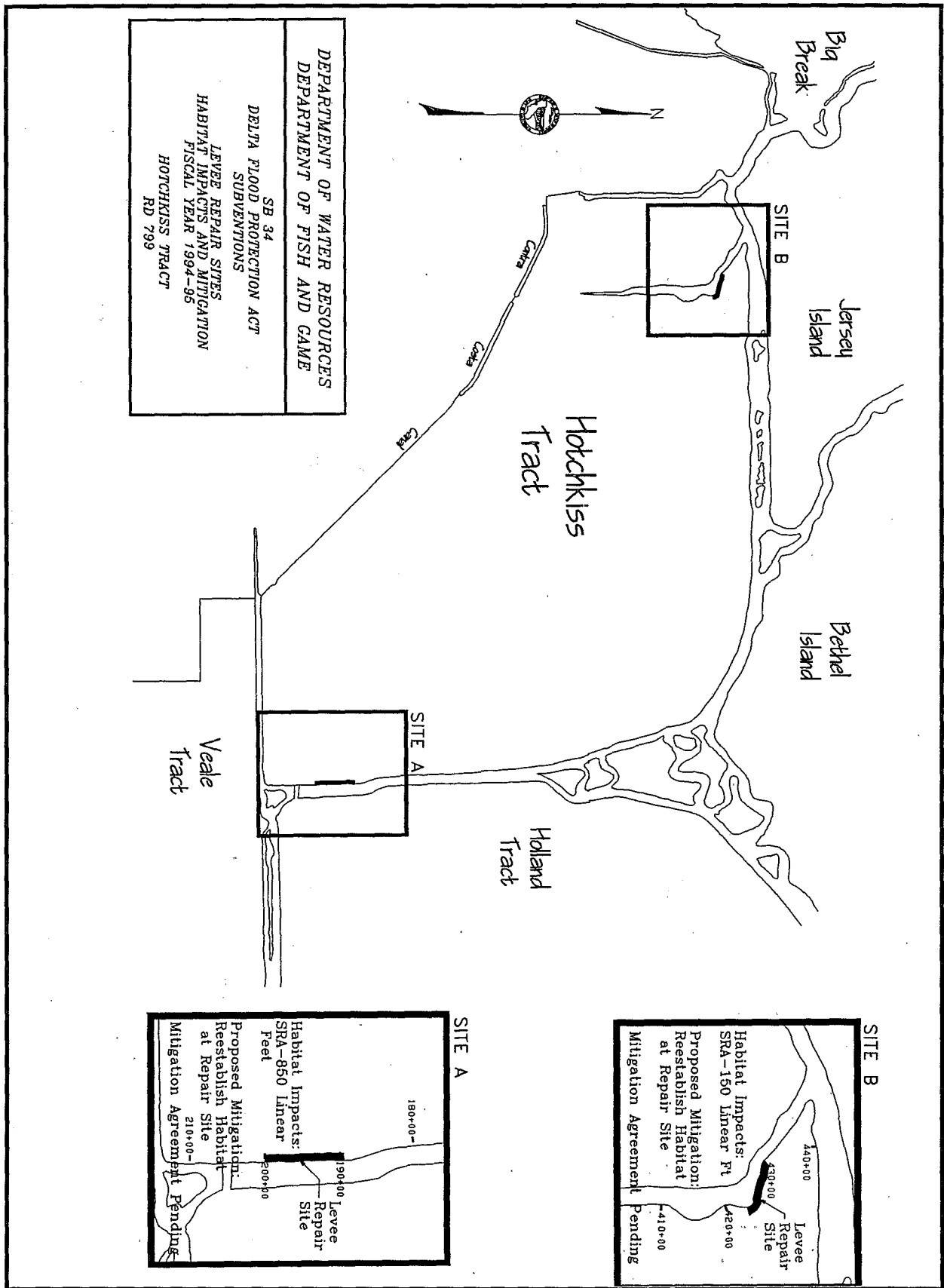


Figure 1—Subventions: Hotchkiss Tract

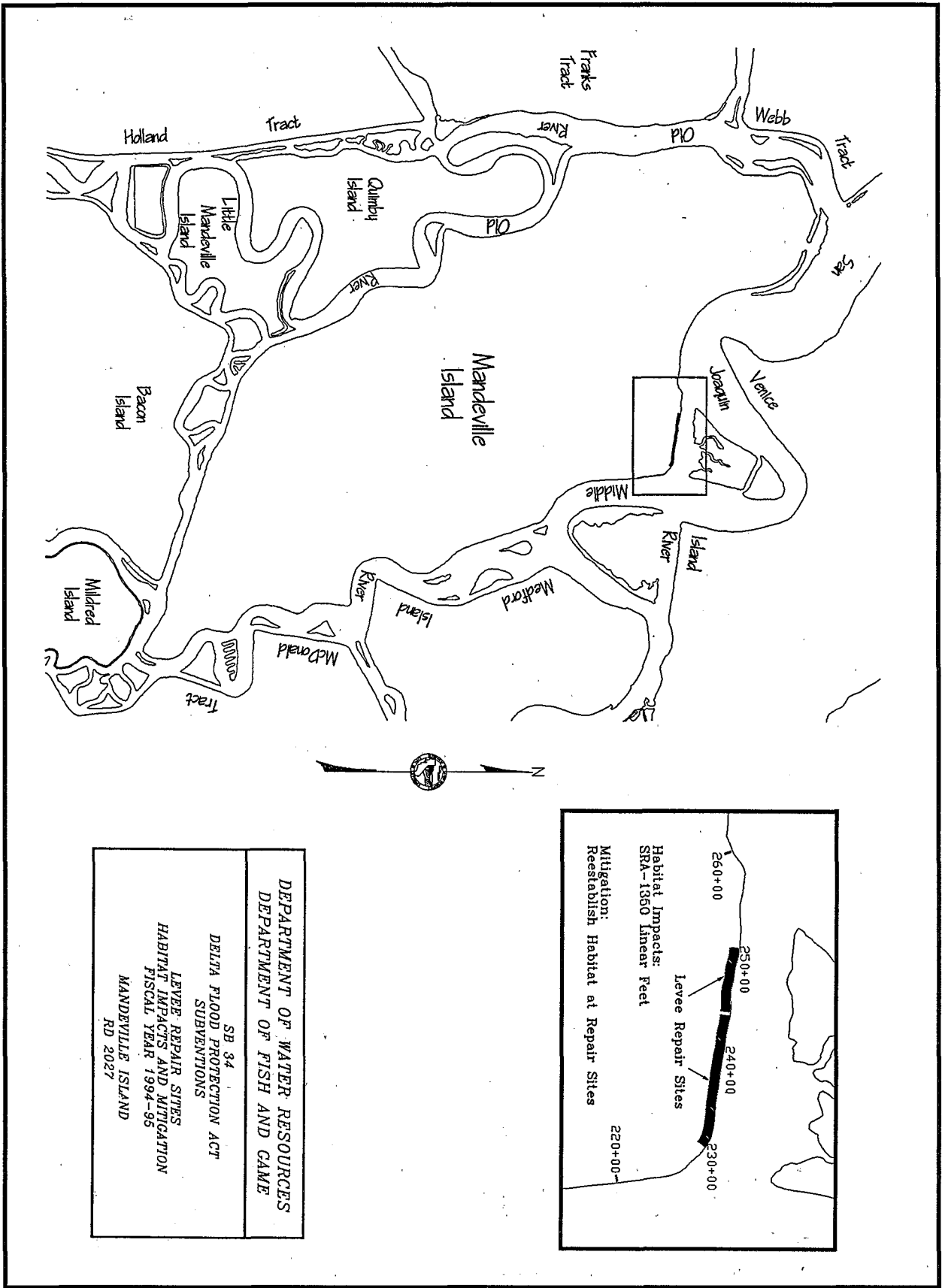


Figure 2—Subventions: Mandeville Island

Special Projects Program Funding & Mitigation

Funding History (spent to date)

Table 3 provides a summary of the total funds spent by Special Projects on levee improvements from FY 1987-88 through FY 1993-94.

Fiscal Year 1994-95 Project Summary

Table 4 provides an estimate of the total funds spent by Special Projects on levee improvements during FY 1994-95. No funds have been spent yet on mitigation since DFG, DWR, and the districts are still finalizing details of the mitigation agreements.

Habitat Impacts & Mitigation Summary

Figures 3-7 depict the location and type of work funded by Special Projects in FY 1994-95. If habitat impacts resulted from levee improvements, then their location and quantity, as well as any required mitigation (by habitat type), are depicted on the figures.

Table 3—Special Projects Program Expenditures for Fiscal Years 1987-88 through 1993-94

Island	RD #	Levee Length (acres)	Island Area (acres)	Payments to Districts
Bethel		11.5	35,000	\$ 1,216,754
Bradford	2059	7.4	2,051	\$ 501,000
Holland	2025	10.9	4,060	\$ 3,440,538
Hotchkiss	799	6.3	3,100	\$ 259,190
Jersey	830	15.6	3,471	\$ 414,341
Sherman	341	9.8	9,937	\$ 2,456,795
Twitchell	1601	9.3	3,516	\$ 7,753,687
Webb	2026	12.8	5,490	\$ 2,485,983
Thornton/NH	348	18.6	9,300	\$ 6,270,603
Walnut Grove	554	1.2	400	\$ 13,839
Total		103.4	44,825	\$ 24,812,729

Table 4—Special Projects Program Estimated Payments to Districts Fiscal Year 1994-95

Island	RD #	Payments to Districts
Bethel		\$ 608,155
Bradford	2059	\$ 0
Holland	2025	\$ 588,145
Hotchkiss	799	\$ 50,879
Jersey	830	\$ 475,084
Sherman	341	\$ 767,562
Twitchell	1601	\$ 1,043,194
Webb	2026	\$ 1,334,789
Thornton/NH	348	\$ 16,192
Total		\$ 4,884,000

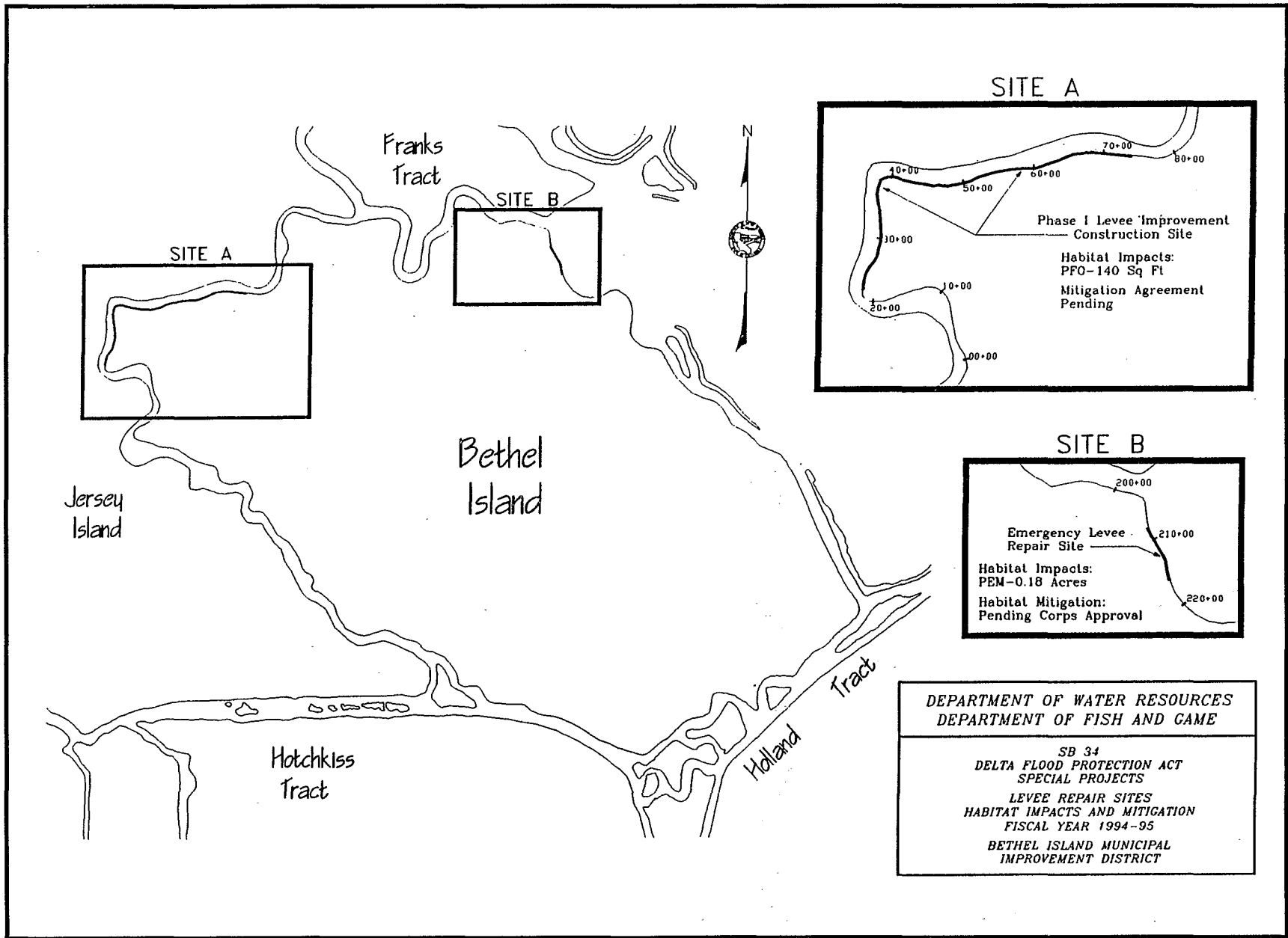
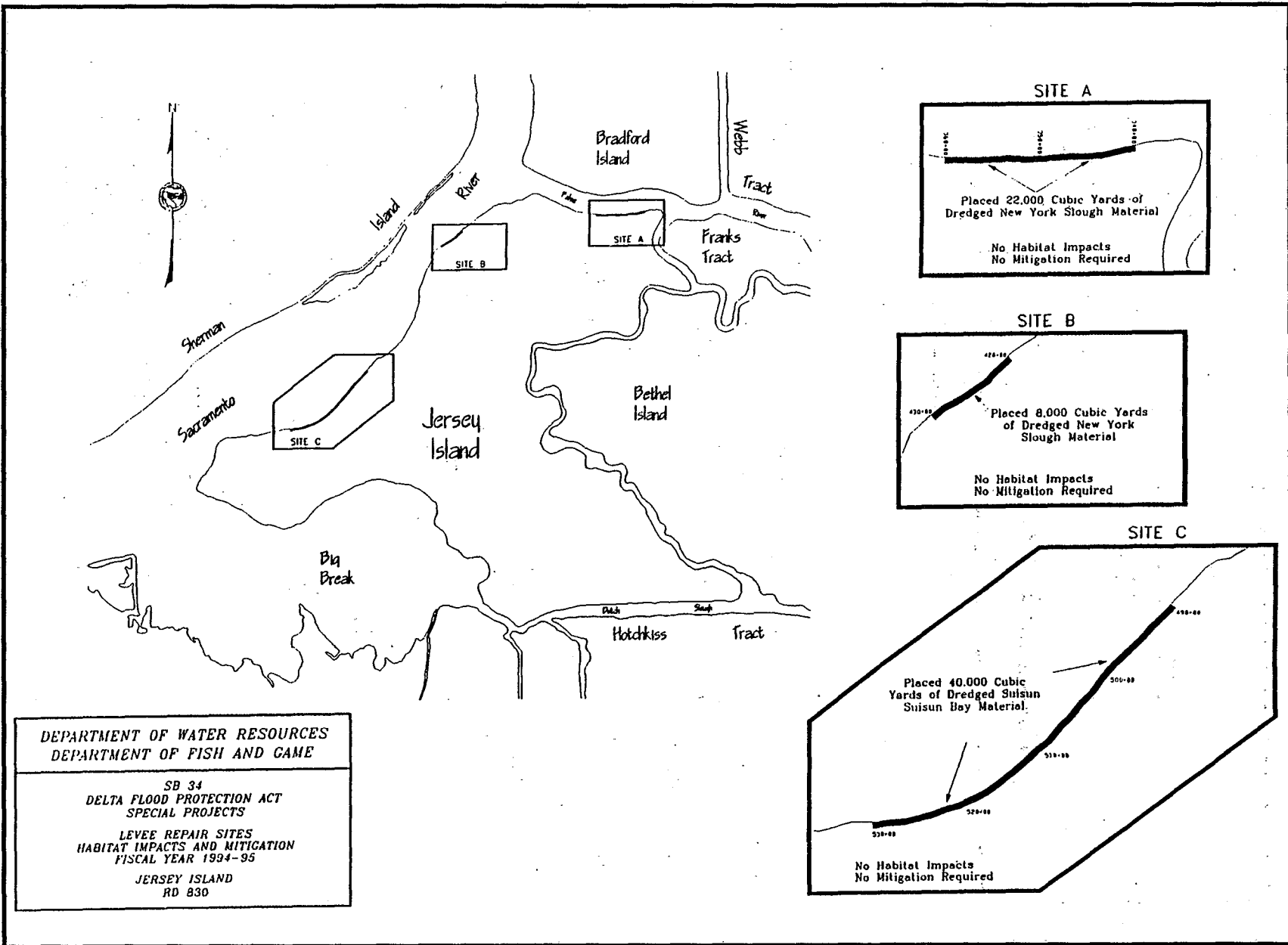


Figure 3—Special Projects: Bethel Island

C-070544

Figure 4—Special Projects: Jersey Island



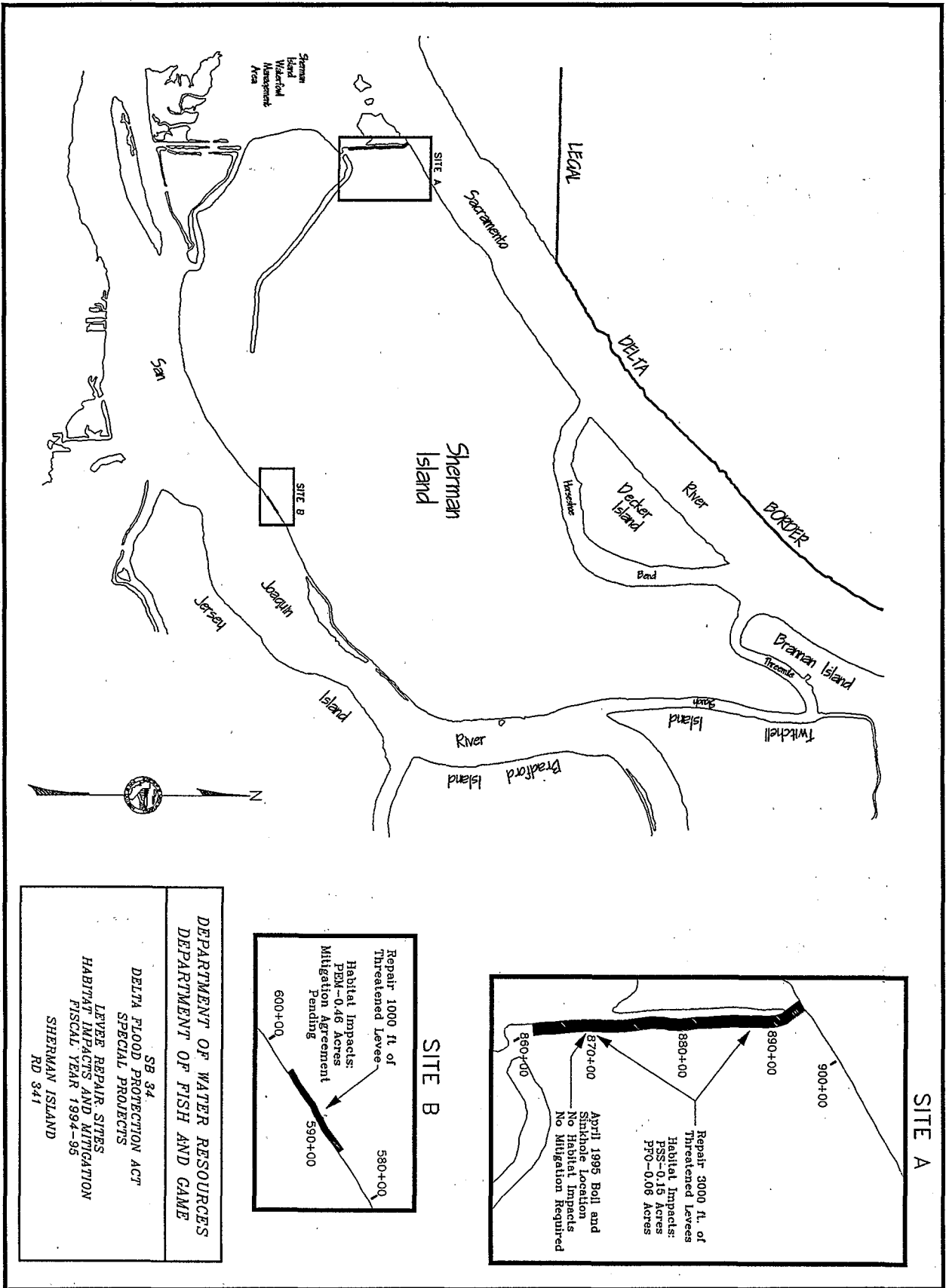


Figure 5—Special Projects: Sherman Island

Figure 6—Special Projects: Twitchell Island

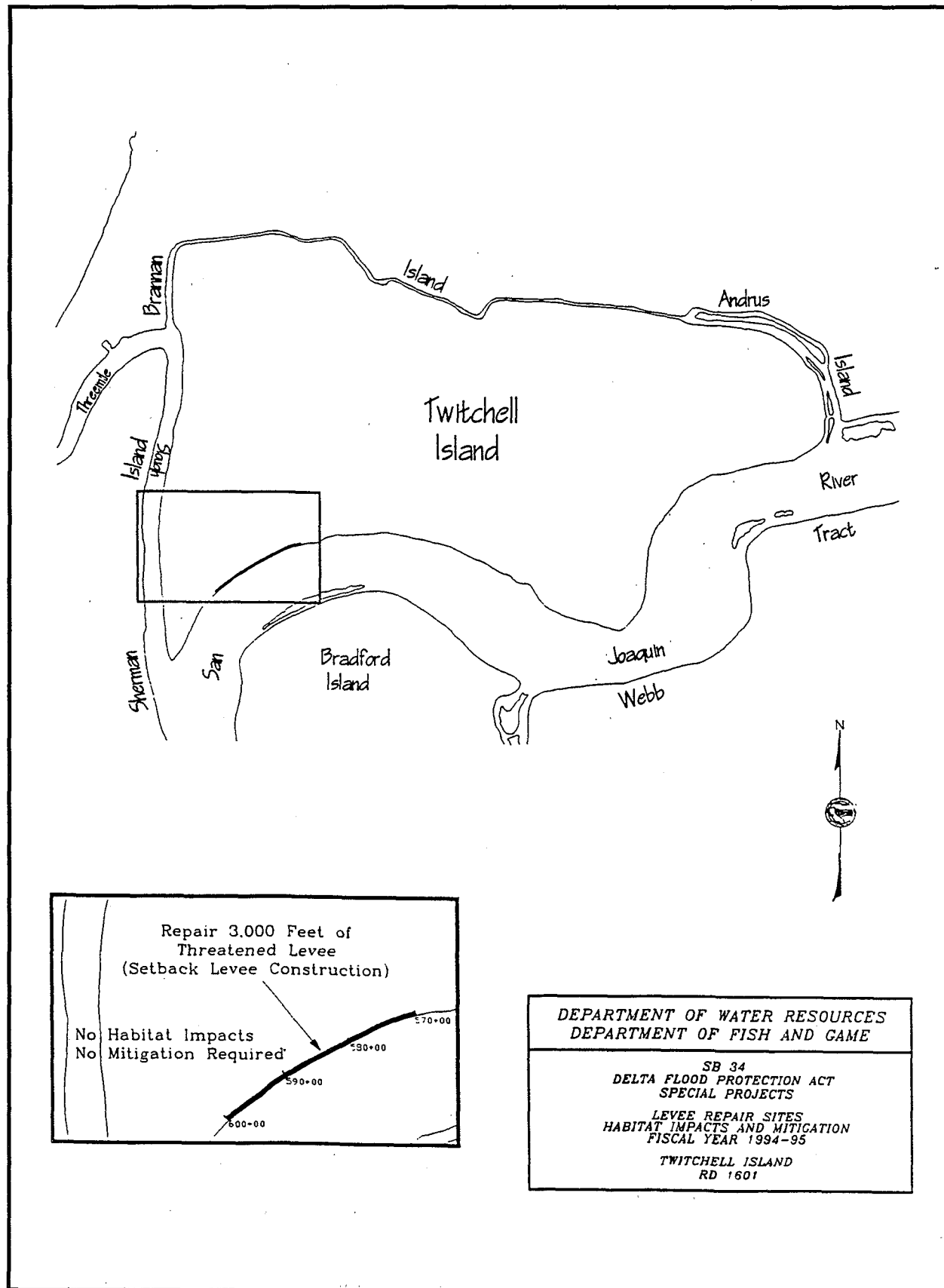
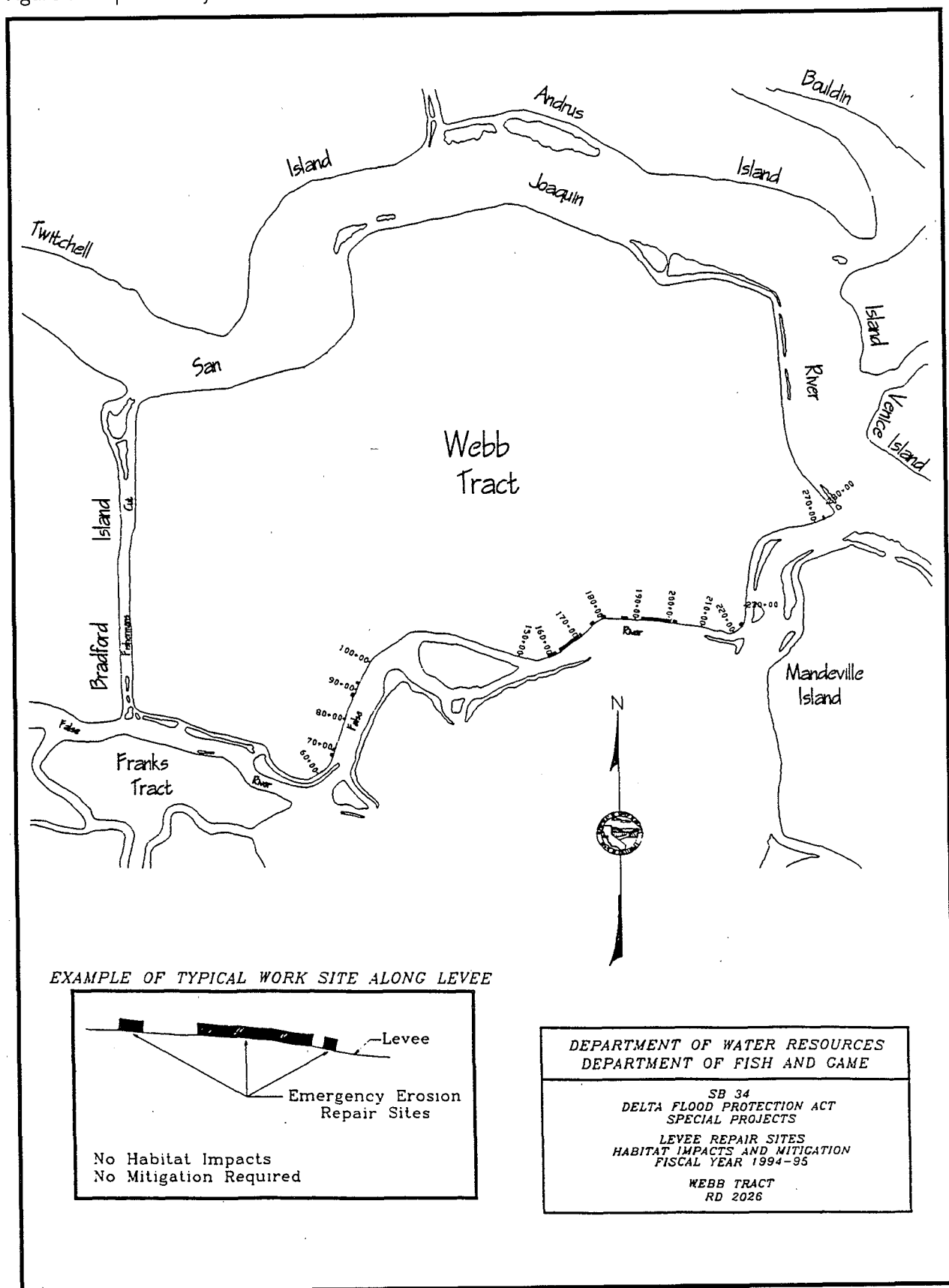


Figure 7—Special Projects: Webb Tract



Cumulative Environmental Impacts

DFG has nearly completed implementing mitigation for past Subventions Program impacts using its special \$3 million allocation. As described in the ***SB 34 Report to the California Legislature for FY 1992-92 and 1993-94***, July 1995, a need still exists to develop shaded riverine aquatic habitat for losses that occurred between 1987-91. SB 34 staff are working to develop techniques that will provide shaded riverine aquatic habitat benefits at a reasonable cost. Approximately 10 percent of the annual Subventions Program appropriation is set aside for developing mitigation, including an obligation for creating 7,000 lineal feet of shaded riverine aquatic habitat from earlier program losses. Current proposals for shaded riverine aquatic habitat development are being considered at Beaver Slough (Canal Ranch, RD 2086) and at Werner Cut (Orwood Tract, RD 2024). Shaded riverine aquatic habitat development will be a priority for upcoming mitigation work.

DFG is still pursuing the development of 100 acres of riparian forest habitat on Little Mandeville pending both an agreement to reclaim the island after it flooded in 1994, and an extension of the fund's expiration date beyond June 1996. Once implemented, this mitigation effort will compensate for the past cumulative impacts to riparian forest.

DFG has not identified any additional cumulative impacts from the beginning of the program to present.

DFG and DWR have made substantial progress in eliminating the potential for cumulative impacts from future levee maintenance by working with reclamation districts to avoid net long-term habitat losses where possible. Consequently, only two reclamation districts performed work in FY 1994-95 that resulted in net long-term habitat loss (Hotchkiss Tract and Mandeville Island). Appropriate mitigation is being developed and approved by DFG.

Where impact avoidance is impossible, SB 34 staff are encouraging a more wholistic approach to maintaining a balance of habitat on Delta levees. A district may now remove selected vegetation for levee maintenance and repair without incurring a mitigation requirement. A district may elect to provide an equal or greater amount of the same vegetation type(s) being impacted on another levee section. The vegetation may either be grown in advance of the levee work or pledged to be reestablished on the work site. All vegetation growth on the levees must conform with the State's ***Hazard Mitigation Plan Vegetation Management Guidelines for Local, Nonproject Delta Levees***. The conditions for such work, which are listed in a DFG Routine Maintenance Agreement (DFG Code Section 1600 et.seq.) must be met before levee work can begin.

DFG is working with district representatives to devise an efficient monitoring system that will guarantee the success of each Routine Maintenance Agreement, thereby upholding the Subventions Program's mandate of no net long-term loss of habitat.

DFG and DWR are also exploring incorporating the safe harbor concept into routine maintenance agreements for levee work done in compliance with the habitat balance concept above. A safe harbor agreement protects landowners from Endangered Species Act enforcement when listed species take up residence on land converted from intensive use (agriculture or cleared levees) to wildlife habitat.

DFG is developing ways to mitigate for the loss of the shaded riverine aquatic habitat that occurred from 1987 to 1991. The July 1995 SB 34 report describes these losses and how DFG plans to approach mitigation. The shaded riverine aquatic habitat is proving difficult to replace.

Program Highlights

Subventions: SB 1065 MOU Mandates

Master Environmental Assessment

In 1995, DFG completed an MEA with assistance from DWR. Its purpose was to collect information and provide an overview of Deltawide environmental values. It will help to: (1) determine no net long-term loss of habitat impacts (current and cumulative) of SB 34 projects and work, and (2) provide information about State and federal regulatory programs to which SB 34 programs may be subject.

Copies have been distributed to reclamation districts, State and federal agencies, and levee consultants.

Mitigation Guidance Document

Also in 1995, DFG completed a Mitigation Guidance Document which provides a menu of possible mitigation measures for use in the programs. It details information useful to prepare the mitigation element of each levee project plan.

U.S. Army Corps of Engineers'

General Permit 014

On December 26, 1995, the Sacramento District of the U.S. Army Corps of Engineers reissued General Permit 014, Sacramento-San Joaquin River Delta Dredging for Levee Maintenance. GP 014, in tandem with the Corps' Nationwide Permit 3, Maintenance, authorizes dredging activity to obtain material for levee maintenance in the Delta. Eligible beneficiaries of GP 014 include Delta Flood Protection Act (SB 34) program participants, as well as other public agencies or littoral landowners doing work similar to that performed under SB 34.

The process for reissuance began at the request of Delta reclamation district representatives. DWR's SB 34 staff then contacted the Corps requesting reissuance of General Permit 014. Subsequently, DWR

staff facilitated extensive negotiations that resulted in the achievement of a streamlined permit. Finalization of this permit was a result of the cooperative efforts of reclamation district representatives; staff from DWR, DFG, The Resources Agency, The Reclamation Board, State Lands Commission, U.S. Fish and Wildlife Service, and National Marine Fisheries Service; and other dedicated individuals.

GP 014 is significant because, for the first time, the Corps' Sacramento District office is assigning permit administrative oversight to a State agency—DFG. Specifically, DFG's Region 2 SB 34 Project Manager is responsible for administering and monitoring adherence to GP 014 conditions. GP 014 is valid from January 1, 1996 to January 1, 2001.

The Central Valley Regional Water Quality Control Board is developing general waste discharge requirements for projects permitted by GP 014.

Little Mandeville Island Programmatic Mitigation Site

Little Mandeville Island was to have been developed for programmatic Subventions Program mitigation using SB 1065 funds allocated to DFG. However, a levee break occurred and the Island flooded before funds could be expended or work begun. DFG program administrators are currently negotiating to ensure programmatic funds are maintained and mitigation is developed to fulfill the intent of SB 1065.

Demonstration Projects

Program biologists and consulting engineers are continuing their evaluation of the alternative levee protection methods. Interim results indicate that these alternative levee protection methods are adequate and vegetation is growing through the voids in both substrates. A longer observation history will provide more definitive analyses.

Senate Bill No. 34

CHAPTER 28

An act to amend Section 12987 of, to amend, repeal, and add Section 12986 of, to add Sections 12912.5, 12992, and 12993 to, to add Part 4.8 (commencing with Section 12300) to Division 6 of, and to add and repeal Section 12987.5 of, the Water Code, relating to flood control, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor March 11, 1988. Filed with Secretary of State March 14, 1988.]

LEGISLATIVE COUNSEL'S DIGEST

SB 34, Boatwright. Flood control: delta levees.

Existing law authorizes financial assistance to local agencies for maintenance and improvement of levees in the Sacramento-San Joaquin Delta which are not project facilities under the State Water Resources Law of 1945, subject to approval by the Reclamation Board of plans for the maintenance and improvement of the levees. No costs may be reimbursed if the entire cost incurred per mile of levee is \$1,000 or less, 50% of any costs incurred in excess of \$1,000 per mile may be reimbursed, and the maximum total reimbursement is limited to \$2,000,000 annually.

This bill would, until January 1, 1999, authorize reimbursement for 75% of any costs incurred in excess of \$1,000 per mile of levee and delete the \$2,000,000 per year limitation. The bill would, until January 1, 1999, authorize the board to provide for an advance to an applicant not to exceed 75% of the estimated state share. The bill would also require a local agency to first enter into an agreement to indemnify and hold the state harmless from any liability for damages, except that caused by gross negligence, that may arise out of the approvals, agreements, inspections, or work performed and would also make nonsubstantive changes and would require applicants to apply for federal disaster assistance, as specified. The bill would also require the plans approved by the board to include provision for the protection of fish and wildlife habitat determined to be necessary by the Department of Fish and Game, would specify criteria for determining those requirements, and would require the plans to include provisions to acquire easements, as prescribed, along levees, where desirable to maintain structural stability of the levee.

The bill would, until January 1, 1999, create the Delta Flood Protection Fund, would declare legislative intent to appropriate \$12,000,000 each year to the fund through fiscal year 1998-99 from specified tidelands oil and gas revenues, and would declare legislative intent to annually appropriate from the fund \$6,000,000 for local assistance for the maintenance and improvement of delta

Ch. 28

— 2 —

levees pursuant to the above provisions and \$6,000,000 for special delta flood protection projects and for subsidence studies and monitoring. The bill would require the Department of Water Resources to develop and implement, as prescribed, a program of flood control projects on specified islands in the delta and for the Towns of Thornton and Walnut Grove, which has as its primary purpose the protection of discrete and identifiable public benefits, as described. The bill would prescribe related requirements for the funding of projects.

The bill would require \$5,000,000 of the tidelands oil and gas revenues deposited in the California Water Fund to be deposited annually in a special account for appropriation and expenditure by the Department of Water Resources for mitigation of specified adverse effects in (1) the delta, Suisun Marsh, and San Francisco Bay caused by historic upstream depletions and diversions and for other nonreimbursable costs and (2) the Salton Sea and its tributaries.

The bill would make legislative findings and declarations.

The bill would declare that it is to take effect immediately as an urgency statute.

The people of the State of California do enact as follows:

SECTION 1. This act shall be known and may be cited as the Delta Flood Protection Act of 1988.

SEC. 2. The Legislature hereby finds and declares as follows:

(a) The value and public benefit of preserving the Sacramento-San Joaquin Delta, as declared in Section 12981 of the Water Code, is reaffirmed, as is the recognition that not all islands, because of the physical condition of their soils and foundations, can economically justify protection or increased development.

(b) In recent years, federal, state, and local expenditures for disaster assistance have been very high, and hazard mitigation efforts to avoid disasters are needed.

(c) Other lands have been benefited by flood control levees at the expense of the delta through loss of overbank storage which causes more flood water to reach the delta.

(d) Long-term solutions for the delta will be facilitated by short-term efforts to stabilize the existing situation.

SEC. 3. Part 4.8 (commencing with Section 12300) is added to Division 6 of the Water Code, to read:

PART 4.8. DELTA FLOOD PROTECTION

CHAPTER 1. DELTA FLOOD PROTECTION FUND

12300. (a) The Delta Flood Protection Fund is hereby created in the State Treasury. There shall be deposited in the fund all moneys appropriated to the fund and all income derived from the

investment of moneys that are in the fund.

(b) It is the intent of the Legislature to appropriate, in accordance with Section 12938, twelve million dollars (\$12,000,000) each year through fiscal year 1998-99 to the Delta Flood Protection Fund from moneys deposited in the California Water Fund pursuant to subdivision (b) of Section 6217 of the Public Resources Code. It is further the intent of the Legislature to appropriate annually moneys in the Delta Flood Protection Fund to the department for expenditure and allocation, without regard to fiscal years, in the following amounts and for the following purposes:

(1) Six million dollars (\$6,000,000) annually for local assistance under the delta levee maintenance subventions program pursuant to Part 9 (commencing with Section 12980), and for the administration thereof.

(2) Six million dollars (\$6,000,000) annually for special delta flood protection projects under Chapter 2 (commencing with Section 12310) and for subsidence studies and monitoring. These funds shall only be allocated for projects on Bethel, Bradford, Holland, Hotchkiss, Jersey, Sherman, Twitchell, and Webb Islands in the delta and for the Towns of Thornton and Walnut Grove.

(c) Any moneys unexpended at the end of a fiscal year shall revert to the Delta Flood Protection Fund and shall be available for appropriation by the Legislature for the purposes specified in subdivision (b).

12301. The Delta Flood Protection Fund is hereby abolished on January 1, 1999, and all unencumbered moneys in the fund are transferred to the General Fund.

CHAPTER 2. SPECIAL FLOOD CONTROL PROJECTS

12310. As used in this chapter, the following terms have the following meanings:

(a) "Local public agency" means a reclamation district or levee district or other public agency responsible for the maintenance of a nonproject levee as defined in subdivision (d) of Section 12980.

(b) "Project" means the flood control improvement constructed or interests in land acquired pursuant to this chapter.

(c) "Department" means the Department of Water Resources.

(d) "Delta" means the Sacramento-San Joaquin Delta as described in Section 12220.

12311. (a) The department shall develop and implement a program of flood control projects on Bethel, Bradford, Holland, Hotchkiss, Jersey, Sherman, Twitchell, and Webb Islands in the delta and for the Towns of Thornton and Walnut Grove. This program shall have, as its primary purpose, the protection of discrete and identifiable public benefits, including the protection of public highways and roads, utility lines and conduits, and other public facilities, and the protection of urbanized areas, water quality,

recreation, and other public benefits.

(b) Notwithstanding subdivision (a), the department shall develop and recommend a plan of action, including alternatives, for flood control for the Towns of Thornton and Walnut Grove and shall submit the plan to the Legislature by January 1, 1989. The department shall not allocate any funds for implementation of the plan of action for flood control for the Towns of Thornton and Walnut Grove until a plan is approved by the Legislature.

12312. The department may expend any moneys available to it pursuant to paragraph (2) of subdivision (b) of Section 12300 for the purposes of this chapter. In addition, the department shall seek a sharing of costs with the beneficiaries or owners or operators of the public facilities benefited by the flood protection projects. The department shall also seek cost sharing with, or financial assistance from, federal agencies which have programs applicable to, or which have an interest in, the flood protection projects.

12313. (a) The department shall develop a list of areas where flood control work is needed to protect public facilities or provide public benefits. In developing the list, the department shall consult with all appropriate federal, state, and local agencies. The list shall establish a priority for the areas based upon both of the following:

(1) The importance or degree of public benefit needing protection.

(2) The need for flood protective work.

(b) The list shall be submitted to the California Water Commission for approval, and shall be updated by the department, with the approval of the California Water Commission, as the department may deem appropriate.

12314. Guided by the approved priority list developed pursuant to Section 12313, the department shall develop project plans to accomplish the needed flood protection work, in cooperation with the local public agency, the public beneficiary, and the Department of Fish and Game.

The plans shall be subject to the approval of the appropriate local public agency or agencies and subject to any cost-sharing agreement the department may have entered into under Section 12312. Project plans may include, or be a combination of, the improvement, rehabilitation, or modification of existing levees and the conveyance of interests in land to limit or to modify land management practices which have a negative impact on flood control facilities.

Project plans shall include provision for the protection of fish and wildlife habitat determined to be necessary by the Department of Fish and Game and not injurious to the integrity of flood control works. The Department of Fish and Game shall consider the value of the riparian and fisheries habitat and the need to provide greater flood protection in preparing its requirements, and shall not approve any plan which calls for the use of channel islands or berms with significant riparian communities as borrow sites for levee repair

materials, unless fully mitigated, or any plans which will result in a net long-term loss of riparian, fisheries, or wildlife habitat.

12315. Projects shall be undertaken and completed in accordance with the approved project plans. Project works may be undertaken by the department or, at the department's option, by the local public agency pursuant to an agreement with the department.

12316. In addition to any obligations assumed under an agreement with the department and to the extent consistent with that agreement, the local public agency shall do all of the following:

(a) Provide construction access to lands or rights-of-way which it owns or maintains for flood control purposes or for purposes with which the project's required uses are compatible and necessary to complete the project.

(b) Maintain the completed project.

(c) Apply for federal disaster assistance, whenever eligible, under Public Law 93-288.

(d) Hold and save the department, any other agency or department of the state, and their employees free from any and all liability for damages, except that caused by gross negligence, that may arise out of the construction, operation, or maintenance of the project.

(e) Acquire easements up to 400 feet in width from the crown along levees in areas where the department determines that such an easement is desirable to maintain structural stability of the levee. The easement shall (1) restrict the use of the land to open-space uses with minimum tillage of the soil, including, without limitation, nontillable crops such as pasture, the propagation of wildlife habitat, and other compatible uses, (2) provide full access to the local agency for levee maintenance and improvement purposes, and (3) allow the owner to retain reasonable rights of ingress and egress as well as reasonable rights of access to the waterways for water supply and drainage. The local public agency costs of acquisition of the easements shall be reimbursable by the department from moneys appropriated pursuant to paragraph (2) of subdivision (b) of Section 12200.

(f) Comply with all mitigation requirements required pursuant to this chapter.

SEC. 4. Section 12912.5 is added to the Water Code, to read:

12912.5. Of the amounts deposited in the California Water Fund pursuant to subdivision (b) of Section 6217 of the Public Resources Code, five million dollars (\$5,000,000) shall be deposited annually in a special account in the California Water Fund for appropriation by the Legislature to the Department of Water Resources for purposes of mitigation of adverse effects to water quality, fisheries, or wildlife in (1) the Sacramento-San Joaquin Delta, Suisun Marsh, and San Francisco Bay caused by historic upstream depletions and diversions, as nonreimbursable costs under Section 11912 and for other nonreimbursable costs, and (2) the Salton Sea and its tributaries.

Ch. 28

— 6 —

SEC. 5. Section 12986 of the Water Code is amended to read:

12986. (a) It is the intention of the Legislature to reimburse an eligible local agency pursuant to this part for costs incurred in any year for the maintenance or improvement of nonproject levees as follows:

(1) No costs incurred shall be reimbursed if the entire cost incurred per mile of nonproject levee is one thousand dollars (\$1,000) or less.

(2) Seventy-five percent of any costs incurred in excess of one thousand dollars (\$1,000) per mile of nonproject levee shall be reimbursed.

(b) This section shall remain in effect only until January 1, 1999, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1999, deletes or extends that date.

SEC. 6. Section 12986 is added to the Water Code, to read:

12986. (a) It is the intention of the Legislature to reimburse from the General Fund an eligible local agency pursuant to this part for costs incurred in any year for the maintenance or improvement of nonproject levees as follows:

(1) No costs incurred shall be reimbursed if the entire cost incurred per mile of levee is one thousand dollars (\$1,000) or less.

(2) Fifty percent of any costs incurred in excess of one thousand dollars (\$1,000) per mile of levee shall be reimbursed.

(3) The maximum total reimbursement from the General Fund shall not exceed two million dollars (\$2,000,000) annually.

(b) This section shall become operative on January 1, 1999.

SEC. 7. Section 12987 of the Water Code is amended to read:

12987. Local agencies maintaining nonproject levees shall be eligible for reimbursement pursuant to this part upon submission to and approval by the board of plans for the maintenance and improvement of the nonproject levees, including plans for the annual routine maintenance of the levees, in accordance with the criteria adopted by the board.

The plans shall also be compatible with the plan for improvement of the delta levees as set forth in Bulletin No. 192-82 of the department, dated December 1982, and as approved in Section 12225, and shall include provisions to acquire easements up to 400 feet in width from the crown along levees in areas where the department determines that such an easement is desirable to maintain structural stability of the levee. The easement shall (1) restrict the use of the land to open-space uses with minimum tillage of the soil, including, without limitation, nontillable crops such as pasture, the propagation of wildlife habitat, and other compatible uses, (2) provide full access to the local agency for levee maintenance and improvement purposes, and (3) allow the owner to retain reasonable rights of ingress and egress as well as reasonable rights of access to the waterways for water supply and drainage. The local agency cost of acquisition of the easements shall be

— 7 —

Ch. 28

reimbursable by the department from moneys appropriated pursuant to paragraph (1) of subdivision (b) of Section 12300. The plans shall also include provision for protection of the fish and wildlife habitat determined to be necessary by the Department of Fish and Game and not injurious to the integrity of the levee. The Department of Fish and Game shall consider the value of the riparian and fisheries habitat and the need to provide safe levees in preparing its requirements. The Department of Fish and Game shall not approve any plan which calls for the use of channel islands or berms with significant riparian communities as borrow sites for levee repair material, unless fully mitigated, or any plans which will result in a net long-term loss of riparian, fisheries, or wildlife habitat.

The plans shall also take into account the most recently updated Delta Master Recreation Plan prepared by the Resources Agency.

Upon approval of the plans by the board, the local agencies shall enter into an agreement with the board to perform the maintenance and improvement work, including the annual routine maintenance work, specified in the plans. If applications for state funding in any year exceed the state funds available, the board shall apportion the funds among those levees or levee segments that are identified by the department as most critical and beneficial, considering the needs of flood control, water quality, recreation, and wildlife.

SEC. 8. Section 12987.5 is added to the Water Code, to read:

12987.5. (a) In an agreement entered into under Section 12987, the board may provide for an advance to the applicant in an amount not to exceed 75 percent of the estimated state share. The agreement shall provide that no advance shall be made until the applicant has incurred costs averaging one thousand dollars (\$1,000) per mile of levee.

(b) Advances made under subdivision (a) shall be subtracted from amounts to be reimbursed after the work has been performed. If the department finds that work has not been satisfactorily performed or where advances made actually exceed reimbursable costs, the local agency shall promptly remit to the state all amounts advanced in excess of reimbursable costs. If advances are sought, the board may require a bond to be posted to ensure the faithful performance of the work set forth in the agreement.

(c) This section shall remain in effect only until January 1, 1999, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1999, deletes or extends that date.

SEC. 9. Section 12992 is added to the Water Code, to read:

12992. Before any plan is approved, agreement entered into, or moneys advanced or reimbursed under this part, the local agency shall first enter into an agreement with the board indemnifying and holding and saving the State of California, the board, the department, any other agency or department of the state, and their employees free from any and all liability for damages, except that caused by gross negligence, that may arise out of the approvals,

Ch. 28

— 8 —

agreements, inspections, or work performed under this part.

Any funds appropriated for any of the purposes of this part may be used to satisfy any judgment against the state covered by this section, pending indemnification by the local agency.

SEC. 10. Section 12993 is added to the Water Code, to read:

12993. Applicants shall apply for federal disaster assistance, whenever eligible, under Public Law 93-288. If, and to the extent that, it is determined that the work performed does not qualify for federal disaster assistance, the applicant may apply for reimbursement under Section 12986, and the costs shall be deemed incurred by the applicant in the year in which the latter application is filed.

SEC. 11. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to provide urgently needed flood protection at the earliest possible time, it is necessary that this act take effect immediately.

Senate Bill No. 1065

CHAPTER 1140

An act to add Chapter 1.5 (commencing with Section 12306) to Part 4.8 of Division 6 of the Water Code, and to amend Items 3600-001-176, 3860-001-001, and 3860-005-144 of, and to add Items 3860-001-176 and 3860-101-176 to, Section 2.00 of the Budget Act of 1991, relating to water, and making an appropriation therefor.

[Approved by Governor October 14, 1991. Filed with Secretary of State October 14, 1991.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1065, Boatwright. Sacramento-San Joaquin Delta flood protection and levee maintenance.

(1) Existing law requires the Department of Water Resources (department) to develop project plans to accomplish needed flood protection work in the Sacramento-San Joaquin Delta, in cooperation with specified entities, including the Department of Fish and Game. Existing law requires the project plans to include provision for the protection of fish and wildlife habitat determined to be necessary by the Department of Fish and Game, as prescribed. The Department of Fish and Game is prohibited from approving project plans under certain circumstances.

This bill would require the Resources Agency to supervise the implementation of specified special flood control projects and certain levee projects. The bill would require the Resources Agency; the department, the Reclamation Board, and the Department of Fish and Game to enter into a memorandum of understanding to coordinate the implementation of those projects and would require that agreement to include a provision requiring the Department of Fish and Game to enforce mitigation requirements involving those specified projects.

The bill would require the Resources Agency to provide the Legislature with a specified report by January 15 of each year.

(2) The Budget Act of 1991, among other things, appropriates funds for the support of the department and the Department of Fish and Game.

This bill would amend Item 3860-005-144 of Section 2.00 of that act to increase funding for the support of the department from \$5,350,000 to \$12,000,000, payable from the California Water Fund, for transfer to the Delta Flood Protection Fund.

The bill would also amend Item 3600-001-176 of that section, which appropriates \$3,350,000 from the Delta Flood Protection Fund to the Department of Fish and Game, to make that appropriation available during the 1991-92, 1992-93, and 1993-94 fiscal years. The bill would also appropriate \$6,650,000 from that fund to the department for

Ch. 1140

— 2 —

support and local assistance and make a conforming change.

Appropriation: yes.

The people of the State of California do enact as follows:

SECTION 1. Chapter 1.5 (commencing with Section 12306) is added to Part 4.8 of Division 6 of the Water Code, to read:

CHAPTER 1.5. ENVIRONMENTAL MITIGATION AND PROTECTION
REQUIREMENTS

12306. This chapter applies to special flood control projects subject to Chapter 2 (commencing with Section 12310) and to the payment of delta levee subventions under Part 9 (commencing with Section 12980)

12306.5. The Resources Agency shall supervise the implementation of the programs subject to this chapter.

12307. (a) The Resources Agency, the department, the Reclamation Board, and the Department of Fish and Game shall enter into a memorandum of understanding to coordinate the implementation of the programs subject to this chapter.

(b) The memorandum of understanding shall provide that the Department of Fish and Game shall enforce any mitigation requirements involving programs subject to this chapter.

12308. The Resources Agency shall report to the Legislature not later than January 15 of each year all of the following information for each plan approved pursuant to this part:

(a) The name of each local agency submitting a plan, the island or tract involved, and a map of the island or tract indicating the work and the mitigation sites.

(b) The amount of money allocated to the plan, and the amount of money spent on project construction and on project mitigation.

(c) The number of acres of riparian, wildlife, and fisheries habitat and the number of lineal feet of shaded aquatic areas disturbed by projects funded under this part.

(d) The number and quality of acres of replacement habitat provided as mitigation.

(e) An annual assessment as to whether the cumulative impact of projects funded pursuant to this part has resulted in no net long-term loss of riparian, wildlife, or fisheries habitat. If the Resources Agency determines that a net long-term loss has occurred, it shall include in its assessment the necessary steps to correct those deficiencies.

SEC. 2. Item 3600-001-176 of Section 2.00 of the Budget Act of 1991 is amended to read:

— 3 —

Ch. 1140

3600-001-176—For support of Department of Fish and Game, for payment to Item 3600-001-200, payable from the Delta Flood Protection Fund 3,350,000

Provisions:

1. Of the funds appropriated in this item, \$350,000 shall be spent solely for the purposes of carrying out the responsibilities of the Department of Fish and Game pursuant to Part 4.8 (commencing with Section 12980) and Part 9 (commencing with Section 12980) of Division 6 of the Water Code.
2. Of the funds appropriated in this item, \$3,000,000 shall be spent to implement projects to compensate for damage to riparian, fisheries, and wildlife habitat that has occurred as a result of projects funded pursuant to Part 4.8 (commencing with Section 12980) and Part 9 (commencing with Section 12980) of Division 6 of the Water Code prior to July 1, 1991. The projects shall be designed and implemented to achieve the habitat protection standards established in Section 12987 of the Water Code.
3. The funds appropriated by this item shall be available to the Department of Fish and Game for the purposes specified in this item for the 1991-92, 1992-93, and 1993-94 fiscal years. Any funds not encumbered as of June 30, 1994, shall revert to the Delta Flood Protection Fund.

SEC. 3. Item 3860-001-001 of Section 2.00 of the Budget Act of 1991 is amended to read:

3860-001-001—For support of Department of Water Resources 31,034,000

Schedule:

- (a) 10-Continuing Formulation of the California Water Plan 22,636,000
- (b) 20-Implementation of the State Water Resources Development System 1,304,000
- (c) 30-Public Safety and Prevention of Damage 22,979,000
- (d) 40-Services 4,291,000
- (e) 50.01-Management and Administration 47,672,000

Ch. 1140

— 4 —

(f) 50-02-Distributed Management and Administration.....	-47,672,000
(g) Reimbursements	-10,180,000
(gx) Unallocated trigger reduction	-633,000
(h) Amount payable from the Special Account for Capital Outlay (Item 3860-001-036)	-100,000
(i) Amount payable from the California Environmental License Plate Fund (Item 3860-001-140)	-300,000
(ix) Amount payable from the California Water Fund (Item 3860-001-144)	-1,000,000
(j) Amount payable from the Delta Flood Protection Fund (Item 3860-001-176)	-1,050,000
(jx) Amount payable from the Delta Flood Protection Fund (Item 3860-001-176, Budget Act of 1989 as reappropriated by Item 3860-490, Budget Act of 1991)	-457,000
(k) Amount payable from the Environmental Water Fund (Item 3860-001-244)	-1,199,000
(l) Amount payable from the State Clean Water Bond Fund (Item 3860-001-740)	-61,000
(m) Amount payable from the Water Conservation and Water Quality Bond Fund (Item 3860-001-744) ..	-255,000
(n) Amount payable from the Water Conservation Bond Fund of 1988 (Item 3860-001-790)	-679,000
(o) Amount payable from the Federal Trust Fund (Item 3860-001-890) ..	-1,981,000
(p) Amount payable from the Renewable Resources Investment Fund (Item 3860-001-940)	-2,281,000

Provisions:

1. The amounts appropriated in Items 3860-001-001 to 3860-001-940, inclusive, shall be transferred to the Water Resources Revolving Fund (691) for direct expenditure in such amounts as the Department of Finance may authorize, including cooperative work with other agencies. The money so transferred shall be placed in a special account in that fund and shall not be available for expenditure after June 30, 1992. Any unen-

— 5 —

Ch. 1140

cumbered balances shall be returned to the appropriate funds as of June 30, 1992. Expenditures for technical services and general management charged to programs from all support appropriations for the Department of Water Resources in this act shall not exceed \$20,591,000 and \$22,428,000, respectively, without prior approval of the Department of Finance.

SEC. 4. Item 3860-001-176 is added to Section 2.00 of the Budget Act of 1991, to read:

3860-001-176—For support of Department of Water Resources, for payment to Item 3860-001-001, payable from the Delta Flood Protection Fund 1,050,00
Provisions:
1. Provision 1 of Item 3860-001-001 shall also be applicable to this item.

SEC. 5. Item 3860-005-144 of Section 2.00 of the Budget Act of 1991 is amended to read:

3860-005-144—For support of Department of Water Resources, payable from the California Water Fund, for transfer to the Delta Flood Protection Fund (12,000,000

SEC. 6. Item 3860-101-176 is added to Section 2.00 of the Budget Act of 1991, to read:

3860-101-176—For local assistance, Department of Water Resources, Program 30.20-Flood Control Subventions, payable from the Delta Flood Protection Fund 5,600,000
Provisions:
1. The funds appropriated in this item shall be spent in accordance with, and subject to, the provisions of the Delta Flood Protection Act of 1988 (Chapter 28, Statutes of 1988).
2. The funds appropriated in this item may be spent on the recommended interim actions set forth in the Plan of Action for Flood Control for the Towns of Thornton and Walnut Grove, February 1989.

Ch. 1140

— 6 —

SEC. 7. It is the intent of the Legislature that the annual Budget Bill include, as a separate line item, sufficient funding for the Department of Fish and Game to carry out its responsibility pursuant to Chapter 2 (commencing with Section 12310) of Part 4.8 of, and Part 9 (commencing with Section 12980) of, Division 6 of the Water Code.

MEMORANDUM OF UNDERSTANDING
BY AND BETWEEN

THE

CALIFORNIA DEPARTMENT OF WATER RESOURCES
THE RECLAMATION BOARD
CALIFORNIA DEPARTMENT OF FISH AND GAME
AND
THE RESOURCES AGENCY

REGARDING SB 34 FISH AND WILDLIFE PROTECTION

This Memorandum of Understanding is made and entered into by and between the California Department of Water Resources (hereinafter DWR), The Reclamation Board (hereinafter Board), the California Department of Fish and Game (hereinafter DFG), and The Resources Agency.

The purpose of this Memorandum of Understanding (hereinafter MOU) is to direct the implementation of the no net long-term loss of habitat policy that is mandated in the Delta Flood Protection Act of 1988 (hereinafter SB 34). Concepts agreed upon in this MOU apply both to the Delta Levee Subventions and the Special Projects components of SB 34.

WHEREAS, DWR, Board and DFG desire to fulfill that obligation as stated in SB 34 to assure that no net long-term losses of riparian, fisheries, or wildlife habitat will occur as a result of SB 34 funded projects; AND

WHEREAS, Board has the responsibility for approving criteria and plans for maintenance and improvements of nonproject levees under the Subventions Program; AND

WHEREAS, DWR, Board and DFG have completed an initial estimate of impacts to riparian and wildlife habitat resulting from the proposed levee projects; AND

WHEREAS, the results of this initial analysis are the basis for initial protective measures in this MOU; AND

WHEREAS, the initial estimate may be adjusted to reflect actual habitat impacts thereby adjusting the protective requirements; AND

Appendix C

- WHEREAS, avoidance of impacts is the most desirable approach to project protective measures; AND
- WHEREAS, DWR, Board and DFG agree that protective measures for no net long-term loss of habitat should be located as close to the site of impact as practical, and off-site measures should only be explored when all on-site options are infeasible; AND
- WHEREAS, should replacement of lost habitat be necessary, that replacement habitat is to be of the same type; AND
- WHEREAS, DWR, Board and DFG agree that any necessary off-site protective measures should be distributed based upon ecological principles that serve to maintain or enhance the biological diversity of the Delta; AND
- WHEREAS, the parties hereto desire to cooperate in replacing lost habitats by means of this MOU; AND
- WHEREAS, DFG will give early consideration to supporting DWR and Board's efforts to implement wildlife management practices and subsidence control on Sherman Island and Twitchell Island consistent with other provisions of this agreement; AND
- WHEREAS, DFG will give early consideration to supporting DWR and Board's effort to coordinate the SB 34 program with the Department of Parks and Recreation's Franks Tract project for riparian habitat creation as well as other purposes; AND
- WHEREAS, DWR, Board and DFG agree that public ownership, protection, and management of these islands under a plan that is acceptable to DFG can preserve and enhance existing significant fish and wildlife values; AND
- WHEREAS, the specific mitigation acreage, mitigation credits, if any, and other particulars of that future plan are yet to be determined; AND
- WHEREAS, DFG is recognized as the management authority for fish and wildlife habitat; AND
- WHEREAS, DWR, Board and DFG recognize that the Delta currently contains threatened and endangered species and that mitigation and/or avoidance measures must be taken to provide full

compensation for potential adverse impacts to these species; AND

WHEREAS, DWR is recognized as the CEQA lead agency or responsible agency for Special Flood Control Projects, and the Board the responsible agency for Delta Levee Subventions, and DFG as a responsible agency for both programs; AND

WHEREAS, this MOU will be updated as new information becomes available; AND

WHEREAS, the conditions in this MOU are not intended to supersede requirements under CEQA, NEPA, State and Federal Endangered Species Acts, or Section 404 of the Clean Water Act, or Section 1600 et seq. of the Fish and Game Code.

NOW, THEREFORE, it is mutually agreed and understood as follows:

1. DFG, in consultation with DWR and the Reclamation Board, will prepare a master environmental assessment for the SB 34 programs, to be adopted no later than June 30, 1993. The master environmental assessment will collect information on and provide an overview of Delta-wide environmental values and is intended to be used to assist in determinations of "no net long-term loss," of cumulative impacts of SB 34 projects and work, and in providing information relevant to State and federal regulatory programs to which SB 34 programs may be subject. DFG, also in consultation with DWR and The Reclamation Board, shall develop a "menu" of possible mitigation measures for use in the programs. DWR and the Board shall fully cooperate in the preparation of the MEA including, but not limited to, providing DFG with adequate funds to prepare the study.
2. For use in each levee repair or improvement project, DFG shall develop a guidance document drawing upon the master environmental assessment as appropriate and detailing information useful to the mitigation element of each project plan. Submittal of information pursuant to this guidance document shall not alter the obligations of the project proponents (DWR, The Reclamation Board, or local agencies) under CEQA. The guidance document generally shall direct local agencies to develop a mitigation element consistent with the following principles:
 - (i) The mitigation element shall consider the value of the riparian and fisheries habitat and the need to

provide flood protection based on sound engineering.

- (ii) The mitigation element shall include provision for the protection of fish and wildlife habitat determined to be necessary and not injurious to the integrity of flood control works.
 - (iii) The mitigation element shall provide for the full mitigation of channel islands or berms with significant riparian communities if proposed for use as borrow sites for levee repair materials.
 - (iv) The mitigation element shall ensure that the project does not result in a net long-term loss of riparian, fisheries, or wildlife habitat.
 - (v) The mitigation element shall consider the mitigation to be accomplished, if any, under the California Environmental Quality Act, the California Endangered Species Act, and Section 1600 et seq. of the California Fish and Game Code.
 - (vi) The mitigation element shall provide an implementation plan which shall do the following:
 - (A) Describes the mitigation work to be implemented.
 - (B) Includes a schedule for implementation of the mitigation work which ensures that mitigation work will be accomplished prior to, or concurrent with, the construction of the project, or a written description why doing so would be impractical, which includes a schedule detailing when mitigation would be implemented as soon thereafter as practical.
 - (C) Includes a financing plan for the mitigation work, the share of mitigation costs attributable to each source, and a schedule of when the funds are to be provided.
3. (i) DFG, the Board, and DWR shall cooperate in the review of plans and mitigation elements. DFG approval of a specific plan shall be based upon a written determination that the plan's mitigation element achieves each of the following goals:
- (A) The project does not involve the use of channel islands or berms with significant riparian

communities as borrow sites for levee repair materials unless the impacts are fully mitigated.

- (B) The project will not result in a net long-term loss of riparian, fisheries or wildlife habitat.
- (C) The mitigation element includes an implementation plan which:
 - (1) Describes the mitigation work to be implemented.
 - (2) Includes a schedule for implementation of the mitigation work which ensures that mitigation work will be accomplished prior to, or concurrent with, the construction of the project, or a written description why doing so would be impractical, which includes a schedule detailing when mitigation would be implemented as soon thereafter as practical.
 - (3) Includes an adequate financing plan for the mitigation work, the share of mitigation costs attributable to each source, and a schedule of when the funds are to be provided.
- (D) It is understood that mitigation elements may consist of or include participation in comprehensive regional mitigation-banking programs.
- (ii) Upon approval of mitigation elements by DFG, the project proponent shall be required to enter into a legally enforceable agreement with DFG to ensure that the mitigation element will be adequately implemented, DWR and the Board may encumber funds to implement the project.
- (iii) DWR or the Board may temporarily waive the requirements of this section if it determines that an emergency situation exists which requires immediate action, in which case these requirements shall be carried out as soon thereafter as practicable.
- 4. DWR, Board, and DFG will encourage and seek out the development and maintenance of measures to protect habitats throughout the Delta. With the first priority being avoidance of impacts and the second priority on-site mitigation measures, off-site measures will be explored only when on-island measures are deemed impractical. DWR, Board, and DFG will cooperatively work to provide information and

guidance to local agencies developing mitigation elements consistent with this section and with sections 1, 5, and 6.

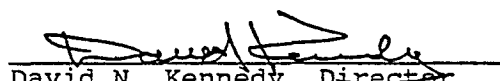
5. DFG will use the U.S. Fish and Wildlife Service Habitat Evaluation Procedure (HEP), or a modified version thereof, to guide long-term decisions for proposed action to result in no net long-term loss of fisheries, wildlife, and riparian habitat.
6. DWR and DFG shall implement levee stability demonstration projects which maximize fish and wildlife habitat values without using barren riprap.
7. DWR and Board, in consultation with DFG and coordinated with direct appropriations to DFG as may be made, will reserve funds for protective measures to ensure that no net long-term loss of habitat will occur as the result of SB 34 funded projects. This account will be adjustable each year, depending upon the cost of providing the appropriate habitat protection. This money is to be spent only for fish and wildlife purposes and only by or with the concurrence of DFG. Funding for approved projects shall include sufficient funds for maintenance and operation costs necessary to sustain the long-term viability of the mitigation measure. DWR, DFG, and Board will enter into and fund a long-term maintenance and operating agreement for lands acquired for wildlife protection where DFG desires such responsibility, as long as Delta Flood Protection funding is available. DFG shall receive each year \$350,000 or such greater or lesser amount as The Resources Agency deems appropriate from that year's appropriation from the Delta Flood Protection Fund for the purpose of carrying out DFG's responsibilities under SB 34, SB 1065, and this MOU.
8. Any requirements under CEQA, Fish and Game Code Sections 1600 et seq. or the California Endangered Species Act will be carried out in a timely manner. DFG will provide both informal and formal consultation as needed.
9. DFG shall conduct at least one annual inspection of each levee and mitigation site for which maintenance, improvement, or mitigation have been provided pursuant to this part.
10. DFG shall appoint a program manager to develop and implement a 1991-92 plan and budget for implementation of mitigation funded pursuant to Section 3600-001-176 of the 1991-92 Budget Act and under Section 6 above. The plan shall include a request for proposals for a separate contract to analyze past habitat impacts and to propose alternative measures to replace past habitat losses.

11. The Resources Agency will exercise an oversight role over all provisions of this MOU, and shall appoint an advisory committee of flood control, environmental, legislative, and governmental interests to consult in that capacity.
12. This MOU shall commence on the last date signed below and reflects revisions made to the MOU signed on November 12, 1991.



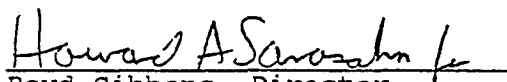
Douglas P. Wheeler
Secretary for Resources
The Resources Agency

Date MAR 26 1992



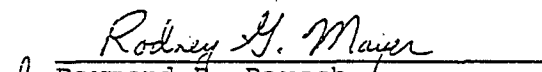
David N. Kennedy, Director
Department of Water Resources

Date 3-26-92



Howard A. Sarosohn
Boyd Gibbons, Director
Department of Fish and Game

Date 3-26-92



for Raymond E. Barsch
General Manager
The Reclamation Board

Date 3/26/92

Conversion Factors

Quantity	To convert from standard units	To metric unit	Multiply standard unit by	To convert to standard unit, multiply metric unit by
Length	inches (in)	millimeters (mm)	25.4	0.03937
	inches (in)	centimeters (cm)	2.54	0.3937
	feet (ft)	meters (m)	0.3048	3.2808
	miles (m)	kilometers (km)	1.6093	0.62139
Area	square inches (in ²)	square millimeters (mm ²)	645.16	0.26417
	square feet (ft ²)	square meters (m ²)	0.092903	10.764
	acres (ac)	hectares (ha)	0.40469	2.471
	square miles (mi ²)	square kilometers (km ²)	2.59	0.3861



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State of California
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Department of Fish and Game
Department of Water Resources

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